IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.
Court No. 3

Criminal Misc. Application No. 249/2003

Babu Singh Bhadoria and anthers …… petitioners.

Vs.

State of Uttaranchal ……. Respondents.

Hon'ble Irshad Hussain, J.

This is a petition under section 482 of the Code of Criminal Procedure against the order of the learned Magistrate passed on 12.06.2003 and also judgment and order of the revisional court dated 9-10-2003.

2- Heard Sri Vinod Sharma learned counsel for the petitioners and learned A.G.A.

3- On behalf of the accused-applicants the application for exemption was moved on the date of the recording of the evidence. The witnesses were present on that day and considering that the counsel for the accused also did not put in appearance the application for exemption was dismissed. At the same time the learned Magistrate also forfeited the bail bonds of the accused and directed recovery of amount of the bond straight away without giving any show cause notice as envisaged by section 446 of the Cr.P.C.. This order had been affirmed by the revisional Court without taking into consideration the legal aspect of the matter. The learned Magistrate could not have straight-away passed an order to recover the amount of bail bonds without giving show cause notice. This part of the order can not legally be maintained. The petition to this extent deserve to be allowed.

4- So far the bail is concerned the accused-applicants have not moved any application seeking bail before the Sessions Judge therefore I am not inclined to consider the bail aspect of the case.

5- The petition is partly allowed. The order directing recovery of the amount of the bail bonds is set aside. The learned Magistrate shall take legal proceedings by issuing showing cause notice and then proceed to pass the order afresh according to law.

6- The petition is disposed of accordingly.

(Irshad Hussain, J.)

Dated: 23-10-03
ISB